



Office of the Attorney General
State of Texas

May 5, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Ernest A. Emerson
State Fire Marshal
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286

OR93-221

Dear Mr. Emerson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18213.

The Texas Commission on Fire Protection (the "commission") has received a request for information relating to a complaint about a certain type of fire extinguisher. Specifically the requestor seeks "information [the commission has] on this complaint (i.e. name of complainant, date of complaint, address, etc.)." You assert that this information is excepted under section 3(a)(3) of the Open Records Act.

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

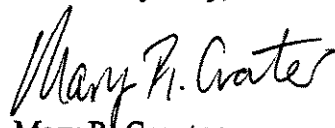
Information must relate to litigation that is pending or reasonably anticipated to be excepted under section 3(a)(3). *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You allege that the company which is the subject of the complaint has "knowingly deceived and misled the business consumer in violation of the Deceptive Trade Practices and the Consumer Protection Act" and that you anticipate "that injunctive relief will be sought, and the State Fire Marshal's office will continue to monitor the progress of the

case." You have also submitted a letter from the commission referring the investigative file to the Consumer Protection Division of the Office of the Attorney General. A representative of that office has informed us that the investigation into this matter is ongoing and that it is reasonably anticipated that a lawsuit will be filed against the company under the Texas Deceptive Trade Practices and Consumer Protection Act. Because you have demonstrated that litigation is reasonably anticipated and that the information relates to that litigation, you may withhold the requested information under section 3(a)(3) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-221.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/LBC/le

Ref.: ID# 18213

Enclosures: Marked documents

cc: Mr. D.H. Williams
Vice President
PYRO Control Inc.
2721 White Settlement Road
Fort Worth, Texas 76107
(w/o enclosures)

Ms. Teri Flack
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78701
(enclosures: letters dated 12/9/92 & 12/2/92)